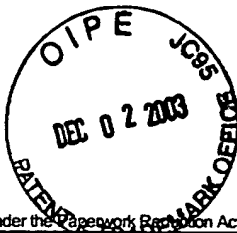


DEC 04 2003



PTO/SB/21 (08-03)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

TRANSMITTAL FORM (to be used for all correspondence after initial filing)		Application Number	09/869,002
		Filing Date	June 22, 2001
		First Named Inventor	Robert BARHAM
		Art Unit	C. Collins
		Examiner Name	1638
Total Number of Pages in This Submission	25	Attorney Docket Number	500852000101

ENCLOSURES (Check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form (in duplicate, 2 pages) <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply (12 pages) <input checked="" type="checkbox"/> After Final <input checked="" type="checkbox"/> Affidavits/declarations (9 pages total) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input checked="" type="checkbox"/> Terminal Disclaimer (1 page) <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Receipt Postcard
Remarks		

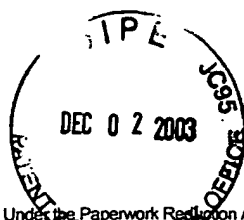
SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	MORRISON & FOERSTER LLP (Customer No. 20872) Otis Littlefield - 48,751
Signature	<i>Ota Littlefield</i>
Date	December 2, 2003

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EL968416479US, in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: December 2, 2003

Signature: *Valerie Cohen* (Valerie Cohen)

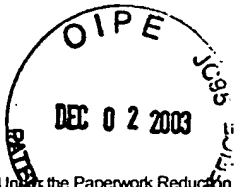


PTO/SB/17 (10-03)
Approved for use through 7/31/2006. OMB 0651-0032
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SUBMITTED BY		(Complete (if applicable))	
Name (Print/Type)	Otis Littlefield	Registration No. (Attorney/Agent)	48,751
Signature	<i>Otis Littlefield</i>	Telephone	(415) 268-6846
		Date	December 2, 2003

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EL968416479US, in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.	
Dated: December 2, 2003	Signature: <i>Valerie Cohen</i> (Valerie Cohen)



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<input checked="" type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27	Art Unit	1638	
TOTAL AMOUNT OF PAYMENT	(\$)	55.00	Attorney Docket No. 500852000101

METHOD OF PAYMENT (check all that apply)	
<input type="checkbox"/> Check	<input type="checkbox"/> Credit Card
<input type="checkbox"/> Money Order	<input type="checkbox"/> Other
<input type="checkbox"/> None	
<input checked="" type="checkbox"/> Deposit Account:	
Deposit Account Number	03-1952
Deposit Account Name	Morrison & Foerster LLP
The Director is authorized to: (check all that apply)	
<input checked="" type="checkbox"/> Charge fee(s) indicated below	<input checked="" type="checkbox"/> Credit any overpayments
<input checked="" type="checkbox"/> Charge any additional fee(s) or any underpayment of fee(s)	
<input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.	

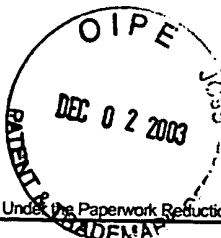
FEE CALCULATION					
1. BASIC FILING FEE					
Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)				(\$)	0.00

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE					
Total Claims	8	-28 =	0	x	9 = 0.00
Independent Claims	4	-4 =	0	x	43 = 0.00
Multiple Dependent			145	=	0.00
Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1202	18	2202	9	Claims in excess of 20	
1201	86	2201	43	Independent claims in excess of 3	
1203	290	2203	145	Multiple dependent claim, if not paid	
1204	86	2204	43	** Reissue independent claims over original patent	
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent	
SUBTOTAL (2)				(\$)	0.00
<small>**or number previously paid, if greater; For Reissues, see above</small>					

FEE CALCULATION (continued)					
3. ADDITIONAL FEES					
Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	
Other fee (specify)		1814	Statutory Disclaimer		55.00
SUBTOTAL (3)				(\$)	55.00
<small>*Reduced by Basic Filing Fee Paid</small>					

SUBMITTED BY		(Complete if applicable)	
Name (Print/Type)	Otis Littlefield	Registration No. (Attorney/Agent)	48,751
Signature	<i>Otis Littlefield</i>	Telephone	(415) 268-6846
		Date	December 2, 2003

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EL968416479US, in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.	
Dated: December 2, 2003	Signature: <i>Valerie Cohen</i> (Valerie Cohen)



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**TERMINAL DISCLAIMER TO OBVIATE A DOUBLE PATENTING
REJECTION OVER A PRIOR PATENT**

Docket Number (Optional)

500852000101

In re Application of: Robert BARHAM et al.

Application No.: 09/869,002

Filed: June 22, 2001

For: **HEAT TOLERANT BROCCOLI**

The owner, R&D Ag, Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 and 173, as presently shortened by any terminal disclaimer, of prior Patent No. 6,294,715. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that it later: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record.

Otis Littlefield
Signature

December 2, 2003

Date

Otis Littlefield - 48,751

Typed or printed name

(415) 268-6846

Telephone Number

- ☒ Terminal disclaimer fee under 37 CFR 1.20(d) is included. Fee Transmittal form (PTO/SB/17) is attached to this submission in duplicate.

*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).
Form PTO/SB/96 may be used for making this certification. See MPEP § 324.

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